

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-131467-14

Date:

September 15, 2014

In Re:

Legend

Taxpayer =

Law Firm =

Corporation =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Shareholder G =

Shareholder H =

Shareholder I =

Shareholder J =

Shareholder K =

Shareholder L =

Dear :

This responds to a letter dated August 20, 2014, submitted by Law Firm requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under

Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A (“Election To Be Treated as an Interest Charge DISC”) for Taxpayer’s first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Law Firm, and accompanied by affidavits and penalties of perjury statements executed by appropriate parties. This office has not verified any of the material submitted in support of the request for rulings. It is subject to verification on examination.

FACTS

Prior to Date 1, Corporation sought assistance from Law Firm to incorporate and qualify Taxpayer as an interest charge domestic international sales corporation (“IC-DISC”). Taxpayer was formed on Date 1 as a domestic corporation with a calendar taxable year to serve as an IC-DISC. Taxpayer operates under a commission arrangement with Corporation. At the time of its formation until Date 2, Taxpayer was owned solely by Shareholders A, B, C, D, E, and F. On Date 2, 100% of Taxpayer’s stock was transferred from Shareholders A, B, C, D, E and F to Shareholders G, H, I, J, K, and L. No commission was paid by Corporation to Taxpayer prior to Date 2.

On Date 3, Law Firm sent Form 4876-A to Corporation for execution and return. Corporation completed and sent Form 4876-A to Law Firm by regular postal mail. Law Firm never received the signed original Form 4876-A. Normally, if a Form 4876-A is not received by Law Firm in a reasonable time to file it with the Service, Law Firm notifies the client. Law Firm did not notify Corporation that the original Form 4876-A had not been received. On Date 4, Law Firm discovered that the original Form 4876-A had never been received by Law Firm, and thus had not been filed with the Service. After notifying Corporation of these facts, Law Firm contacted the Service to submit a request for relief under Treas. Reg. § 301.9100-3 for an extension of time to file the IC-DISC election effective Date 1.

Taxpayer has requested a ruling that grants an extension of time of 60 days from the date of the ruling letter to file Form 4876-A and that such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer’s first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC¹ shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

¹ As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). In addition, we express no opinion as to whether the commissions (or portions thereof) paid to Taxpayer by Corporation may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476 (holding that, where individual shareholders of a DISC transferred their shares in the DISC to their minor children, both the stock transfers themselves and the subsequent commission payments to the DISC constituted gifts). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Marissa K. Rensen
Assistant to Branch Chief, Branch 6
Office of Associate Chief Counsel (International)